

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

EDUARDO VIZCAYNO, #2042663

§

VS.

§

CIVIL ACTION NO. 6:18cv440

MICHAEL UNIT, ET AL.

§

ORDER OF DISMISSAL

Plaintiff Eduardo Vizcayno, a prisoner currently confined at the Allred Unit within the Texas Department of Criminal Justice (TDCJ), proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit complaining of alleged violations of his constitutional rights occurring at the Michael Unit. The case was referred to United States Magistrate Judge, the Honorable John D. Love, for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On July 26, 2020, Judge Love issued a Report, (Dkt. #36), recommending that Plaintiff's civil rights lawsuit be dismissed, with prejudice, as frivolous and for the failure to state a claim upon which relief can be granted. A copy of this Report was sent to Plaintiff at his address, with an acknowledgment card. The docket reflects that Plaintiff received a copy of this Report on August 10, 2020, (Dkt. #37). However, to date, no objections have been filed and Plaintiff has not communicated with the Court since March 2020.

Because objections to Judge Love's Report have not been filed, Plaintiff is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

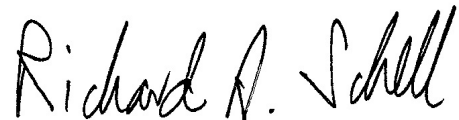
The court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (holding that where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

ORDERED that the Report of the United States Magistrate Judge, (Dkt. #36), is **ADOPTED** as the opinion of the court. Further, it is

ORDERED that the above-styled civil rights proceeding is **DISMISSED**, with prejudice, as frivolous and for the failure to state a claim upon which relief can be granted. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED** as **MOOT**.

SIGNED this the 14th day of September, 2020.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. The first name "Richard" is written with a large, prominent "R". The last name "Schell" is written with a large, prominent "S". The signature is positioned above a horizontal line.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE